IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2812 of 1992

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

N.K. HELAYA

Versus

DIST SUPPLY MAMLATDAR

Appearance:

1. Special Civil Application No. 2812 of 1992

MR GM JOSHI for Petitioner No. 1

MR KM PATEL for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 21/10/2004

ORAL JUDGEMENT

This petition under Article 226 of the

Constitution of India is directed against the order dated 12th February, 1992, whereby the Respondent No.1Corporation has ordered recovery of Rs.16,520/- from the salary of the petitioner by granting indulgence of recovering the said amount from the salary of the petitioner, every month to the tune of Rs.500/-.

2. That according to respondent authority, the petitioner has shown negligence in performance of his duties and without inquiring or making any contact with the District Headquarters, the petitioner has sold levied sugar as free sale and thus has caused financial loss to the Corporation to the tune of Rs.16,520/-. The learned Counsel for the respondents has submitted that the aforesaid negligence of the petitioner has resulted into financial loss in as much as the petitioner has not taken adequate care in performing his duties. It was further contented that punishment imposed upon the petitioner is commensurate with his negligence and it is not a fit case to exercise power under Article 226 of the Constitution of India.

3. It is mainly contented by the learned Advocate for the petitioner that the procedure laid down even for imposing minor penalty as per requirement of Sub Rule 3 of Rule 10 of Gujarat Civil Services (Discipline and Appeal) Rules, 1971 is not followed and though the impugned order at 'Annexure A' dated 24th July, 1990 mentioned it as a notice, but the final decision is taken by the authority, whereby the petitioner was directed to deposit Rs.16,520/- within 10 days.

It is further contended by learned Advocate for the petitioner that the petitioner was not told about the category of the Sugar, whether it is levied or free sale and at the most it was a bonafide mistake and not negligence in performance of duty.

4. Today when the matter was called out for final hearing it was brought to the notice of the Court that the petitioner has retired on 31st January, 1999 and while admitting this petition, the impugned order was stayed by this Court by an order dated 21st April, 1993. The said amount is not recovered from the salary of the petitioner. In the facts and circumstances of the case, the recovery of Rs.16,520/- from the salary of the petitioner on the ground of negligence for the instance of 1985-86 ordered to be recovered in 1992, clearly shows that the order was passed after five years from the date of incidence for a bonafide mistake of the petitioner and particularly when the petitioner has retired in 1999 and

the said order is being stayed since last 12 years this is not a fit case where the order passed by the respondent authority can be upheld. In the facts and circumstances of the case, the impugned order being violative of principle of natural justice, hereby quashed and set aside.

5. With the aforesaid observations and directions, the impugned order which is already quashed by this Court, is not to be implemented any further and no recovery be initiated even from the retiral dues of the petitioner. Rule is made absolute to the above extend. No order as to costs.

(Anant S. Dave, J.)

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